Samat Din & Partners v Bank Pembangunan (M) Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B–02–672 OF 1995
GOPAL SRI RAM, ABDUL MALEK AHMAD AND AHMAD FAIRUZ JJCA
1 JULY 1997

Legal Profession *— Liability as fiduciary — Stakeholding — Whether a solicitor acting as a stakeholder has claim to the subject matter of stakeholding — Whether solicitor may resist bank's claim for custody of issue document of title*

The appellant was a firm of solicitors. It was instructed by Jasudi Sdn Bhd ('Jasudi') to prepare a sale and purchase agreement between Jasudi as the vendor and Kumpulan HY Sdn Bhd ('HY') as the purchaser. HY raised a loan from the first respondent ('the bank') to pay the balance of the purchase price and agreed to create a charge in favour of the bank. The bank requested the appellant to attend to the documentation and registration of the charge. That was done and, after the creation of the charge, the bank released the monies due under the loan directly to HY. The evidence disclosed that Jasudi was not paid the balance of the purchase price. The bank then took out an application to have the issue document of title placed in its custody. The second respondent claimed to have settled the loan sum in full and claimed the right to possession of the issue document of title. The judge directed the appellant to deliver up the issue document of title to the bank. The appellant appealed. The sole question for determination at this stage was whether the appellant as solicitor may successfully resist the bank's claim for custody of the issue document of title.

Held, dismissing the appeal:

It is axiomatic and no citation of authorities is required for the proposition that a solicitor acting as a stakeholder has no claim whatsoever to the subject matter of the stakeholding. If numerous claims are made of him in respect of the subject matter of the stakeholding, it is plain where his duty lies. It is for him to apply to the court by way of interpleader proceedings to seek its directions as to what he should do. That did not happen in the present case.

The appellant could not resist the bank's claim on the ground that Jasudi had not been satisfied or that the second respondent had settled the loan in full. Those were issues germane in any dispute between the first and second respondents, or between HY and Jasudi. They afforded absolutely no defence to the bank's application for delivery up of the issue document of title (see p 545A–C).

[Bahasa Malaysia summary

Perayu adalah sebuah firma peguamcara. Ia telah diarahkan oleh Jasudi Sdn Bhd ('Jasudi') untuk menyediakan suatu perjanjian jual beli di antara Jasudi sebagai penjual dan Kumpulan HY Sdn Bhd ('HY') sebagai pembeli. HY mengambil pinjaman daripada penentang

pertama ('bank tersebut') untuk membayar baki harga beli dan bersetuju untuk mewujudkan gadaian memihak kepada bank tersebut. Bank tersebut meminta perayu untuk menyediakan dokumen-dokumen dan pendaftaran gadaian. Ini telah dilakukan dan setelah gadaian diwujudkan, bank tersebut melepaskan wang yang perlu dibayar di bawah pinjaman itu secara terus kepada HY. Keterangan menunjukkan bahawa Jasudi tidak dibayar baki harga beli. Bank tersebut kemudiannya membuat permohonan untuk mendapatkan dokumen hakmilik keluaran supaya diletakkan di bawah jagaannya. Penentang kedua menuntut ia telah menyelesaikan jumlah pinjaman itu sepenuhnya dan menuntut hak untuk memiliki dokumen hakmilik keluaran. Hakim mengarahkan perayu untuk menyerahkan dokumen hakmilik keluaran kepada bank tersebut. Perayu membuat rayuan. Persoalan tunggal untuk diputuskan pada peringkat ini adalah sama ada perayu sebagai peguamcara boleh menentang tuntutan bank tersebut untuk penjagaan dokumen hakmilik keluaran.

Diputuskan, menolak rayuan:

Adalah tidak dapat disangkal dan tiada keperluan untuk menamakan autoriti bagi kenyataan bahawa peguamcara yang bertindak sebagai pemegang amanah harta tidak mempunyai apa-apa tuntutan terhadap perkara subjek harta amanah yang dipegang. Jika banyak tuntutan dibuat terhadapnya berkenaan dengan perkara subjek harta amanah itu, kewajipannya adalah jelas. Beliau hendaklah memohon kepada mahkamah dengan cara prosiding interplider untuk mendapatkan arahan tentang apa yang beliau patut buat. Ini tidak berlaku dalam kes ini.

Perayu tidak boleh menentang tuntutan bank tersebut atas alasan bahawa Jasudi telah tidak dibayar sepenuhnya atau bahawa penentang kedua telah menyelesaikan pinjaman itu sepenuhnya. Itu adalah isu-isu yang berhubung dengan apa-apa pertikaian di antara penentang pertama dan kedua, atau di antara HY dan Jasudi. Mereka tidak langsung memberikan pembelaan kepada permohonan bank tersebut untuk penyerahan dokumen hakmilik keluaran (lihat ms 545A–C).]

Notes

For cases on liability as fiduciary, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1458–1463.

Legislation referred to

Contracts Act 1950 s 93
National Land Code 1965 s 244

Appeal from: Originating Summons No 24–61 of 1995 (High Court, Shah Alam)

Shamsul Bahrain (*Skrine & Co*) for the appellant.
Prasad Abraham (*Prasad Abraham & Associates*) for the first respondent.
M David Morais (*Sunita Nathan* with him) (*M David Morais*) for the second respondent.

Gopal Sri Ram JCA (delivering oral judgment): The appellant in this case is a firm of solicitors. It was originally instructed by a private limited company, Jasudi Sdn Bhd ('Jasudi'), to prepare a sale and purchase agreement ('the agreement'). Jasudi was the vendor and a company called Kumpulan HY Sdn Bhd ('HY') was the purchaser. The purchase price was RM5m of which RM1.5m was paid as deposit. HY raised a loan from the first respondent to pay the balance of the purchase price. It did this by agreeing to create a charge in favour of the first respondent bank. For the purpose of the loan transaction, the first respondent bank requested the appellant to attend to the documentation and registration of the charge. That was done and the monies due under the loan were released shortly after creation of the charge.

Under the terms of the agreement between Jasudi and HY, at least as understood by the appellant, the balance of the purchase price by way of loan from the first respondent was to come into the appellant's hands. Unfortunately, that did not happen. What the first respondent did was to release the monies directly to HY. The evidence at this stage of the proceedings discloses that Jasudi was not paid the balance of the purchase price in full and that it had taken steps to sue HY and the appellant for specific performance or alternatively for the return of the title.

The first respondent filed the present originating summons on 21 January 1995. By it, the first respondent claimed, inter alia, the return of the issue document of title. The second respondent is one of the guarantors of the loan advanced by the first respondent to HY. His interest in the matter stems from the fact that he claims to have settled the loan sum in full and by virtue of s 93 of the Contracts Act 1950, claims the right to possession of the security, ie the issue document of title to the land in question.

When the originating summons was first heard before the learned trial judge, he took the view that it should be proceeded with as a writ. That order of the judge left the first respondent high and dry because on the face of the documents, it had advanced money but did not have custody of the issue document of title to the land which formed the subject matter of the charge. Under s 244 of the National Land Code 1965, the first respondent as chargee is prima facie entitled to have custody of the issue document of title. Whether it has been paid off by the intervener or whether its rights under s 244 have been extinguished are matters which the learned trial judge will no doubt resolve at the hearing of the converted originating summons.

After the judge had made the order for conversion of the originating summons, the first respondent took out an application to have the issue document of title placed in its custody. The appellant resisted that application. The judge, after hearing arguments, directed the appellant to deliver up the issue document of title of the property in question to the first respondent. It is against this order that the present appeal has been brought.

The sole question for determination at this stage is whether the appellant as solicitor may successfully resist the first respondent's claim for custody of the issue document of title. That question, I think, must be

A answered in the negative and against the appellant. It is axiomatic and no citation of authorities is required for the proposition that a solicitor acting as a stakeholder has no claim whatsoever to the subject matter of this stakeholding. If numerous claims are made of him in respect of the subject matter of the stakeholding, it is plain where his duty lies. It is for him to apply to the court by way of interpleader proceedings to seek its directions B as to what he should do. That did not happen in the present case.

In my judgment, the appellant cannot resist the first respondent's claim on the ground that Jasudi has not been satisfied or that the second respondent has settled the loan in full. Those are issues germane in any dispute between the first and second respondents, or between HY and C Jasudi. They afford absolutely no defence to the first respondent's application for delivery up of the issue document of title.

Small wonder, then, that the judge granted an order in terms of the first respondent's application.

I am of the view that this appeal is devoid of merit and should be D dismissed. Since counsel have agreed that we should fix costs, I award costs of RM500 for each respondent. The deposit of RM500 lodged in court is to be paid to the first respondent in full satisfaction of its costs. All of the orders made by the judge in the court below are affirmed.

E **Abdul Malek Ahmad JCA**: I agree with the views of my learned brother Gopal Sri Ram JCA. I too would dismiss this appeal with costs.

Ahmad Fairuz JCA: I agree that this appeal should be dismissed and that the order of the court below be affirmed.

F *Appeal dismissed.*

Reported by Jafisah Jaafar

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